

'Urban bully' must demolish house

The Port Elizabeth High Court has described a Summerstrand property owner's decision to convert his Sixth Avenue house into an 11-bedroom guesthouse as a form of urban bullying and has given owner Marais Ellis two months to demolish it.

Ellis and the MEC for Local Government Mlibo Qoboshiyane have also been summoned to court to explain why they allegedly refused to comply with previous court orders.

The application, brought by Dr Phillipus van Rensburg and his wife Wilma, signalled a possible end to a six-year legal war between the neighbours.

In her judgment, Judge Elna Revelas said there were restrictive conditions on the title deed for the Ellis property stating it could be used for residential purposes only and that one house could be built for the use of one family.

There is a further restriction that no more than half of the property must be covered by any building and that buildings must be erected within certain building lines.

The court heard that the requirement that property owners must build within the building lines were there to protect the sea view of the neighbours. In September 2006, Ellis approached his neighbours to say he planned to build a second house on the property.

The neighbours objected.

Ellis did not continue with a second building, but started making changes to the existing house - converting the single storey house to a double storey with 11 bedrooms and 11 parking bays.

These building plans were approved by the municipality.

A veritable legal war with his neighbours followed. In 2007, however, the municipality approved his plans to run a six-bedroom guesthouse.

Ellis still had to apply for the restrictive conditions on his title deed to be lifted. A barrage of objections from neighbours and more litigation followed.

In 2009, the court ordered that the part of the building that encroached the building line must be demolished. This did not happen.

Then Qoboshiyane agreed to lift the restrictive conditions on Ellis's title deed. Judge Revelas found that in doing so he had ignored 94 objections from neighbours that raised many legitimate concerns and were substantial and based on sound reasoning.

She said that Ellis's neighbours "correctly complained that these were just brushed aside".

"If Ellis and the MEC had their way, only landowners who have the largest and highest dwellings will have a sea view," she said.

Judge Revelas said Qoboshiyane should have read and not just ignored all the judgments in this drawn-out legal saga.

She found that he did not apply his mind or the correct legal principles when lifting the restrictive conditions and set aside his decision to do so. She said this case was an example of people who just ignored court orders as they saw fit.

Source: *Herald* via I-Net Bridge

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